U.S. Department of Justice

Immigration and Naturalization Service

[redacted]

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: SRC-96-186-50354 Office: Texas Service Center Date: JUN 9 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

Public Copy

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

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DISCUSSION: The immigrant visa petition was initially approved by the Director, Texas Service Center. On the basis of new information received and on further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, on August 7, 1998, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and ultimately revoked the approval of the petition on September 30, 1998. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as an evangelist. The director revoked the approval of the petition determining that the petitioner had failed to establish that it had made a valid job offer to the beneficiary. The director also found that the petitioner had failed to establish its ability to pay the proffered wage.

On appeal, the petitioner argues that the evidence submitted is sufficient.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the

request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue to be examined is whether the petitioner has made a valid job offer.

8 C.F.R. 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must also state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration), or how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

In its letter dated May 6, 1996, the petitioner stated that the beneficiary "will be acting soley [sic] in carrying out the duties of a Senior Evangelist . . . [He] will be paid $15,600.00 per year." In a separate letter, the petitioner stated that the beneficiary "has worked purely on a voluntary basis in this church for the past four years."

On July 19, 1996, the director approved the petition. The beneficiary filed Form I-485, Application to Register Permanent Residence or Adjust Status, on August 19, 1996, and appeared for an interview in connection with this application on March 5, 1997.

On March 5, 1997, the beneficiary was requested to submit evidence of his employment since his arrival in the United States. In response, the beneficiary submitted photocopies of three checks made out to him by the petitioner. There is no evidence that these checks were ever cashed. The beneficiary also submitted photocopies of his federal income tax returns for the years 1994, 1995, and 1996. These tax returns were not supported by any documentary evidence (such as Forms W-2). It must be noted that the beneficiary listed "electronics" as his sole means of income in 1994 and 1995, and that this occupation accounted for approximately 64 percent of his income in 1996.

On August 7, 1998, the director issued a notice of intent to revoke. In response, the petitioner submitted photocopies of eight checks made out to the beneficiary. Again, there is no evidence

that these checks were ever cashed. The petitioner also submitted a photocopy of the beneficiary's 1997 federal income tax return. This tax return was not supported by any documentary evidence.

On appeal, the petitioner argues that the evidence submitted is sufficient. The petitioner's argument is not persuasive. The petitioner has indicated that the beneficiary worked for it on a purely voluntary basis in the years preceding the filing of the petition. The petitioner has not demonstrated that the beneficiary's job either necessitates or warrants full-time, salaried employment. Further, the petitioner has not documented that the beneficiary has been engaged in full-time, salaried employment at the church since the approval of the petition. As was previously stated, there is no evidence that the photocopied checks made out to the beneficiary were ever cashed, and the photocopied tax returns are not supported by any independent, corroborative evidence. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Accordingly, the petitioner has not met the requirements at 8 C.F.R. 204.5(m)(4).

The next issue to be examined is whether the petitioner has the ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage . . . Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner indicated that it would pay the beneficiary an annual salary of $15,600.00. The petitioner submitted financial statements for 1994, 1995, 1996, 1997, and 1998. These statements were not audited. The petitioner also submitted bank statements. The evidence submitted in support of this petition is not sufficient. 8 C.F.R. 204.5(g)(2) provides a list of documents that may be submitted to support a petitioner's claim to be able to pay a wage. The petitioner has not submitted any of these documents. Accordingly, the petitioner has not established its ability to pay the proffered wage in accordance with 8 C.F.R. 204.5(g)(2).

Beyond the decision of the director, the petitioner has failed to establish the beneficiary's two years of continuous religious work experience as required at 8 C.F.R. 204.5(m)(1). Voluntary

participation in church activities is not considered qualifying work experience. Also, the petitioner has failed to establish that the prospective occupation is a religious occupation as defined at 8 C.F.R. 204.5(m)(2). As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.